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October 8, 2004

FILED ELECTRONICALLY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street SW, Room TW-A325
Washington, DC 20554

Re: *Ex Parte* Presentation in MB Docket No. 02-230 (Digital Broadcast Content Protection)

Dear Ms. Dortch:

I write on behalf of the Motion Picture Association of America, Inc., and its member companies, in order to raise an issue concerning authorized digital output protection technologies that the Commission should consider as part of its ongoing Further Notice of Proposed Rulemaking in the above-referenced proceeding. If not addressed by technology proponents, the interoperation of two fundamentally different types of protected outputs may undermine digital broadcast content protection.

There are essentially two types of digital output protection technologies that may be proposed to the Commission for certification in at least the near future: those with proximity-based controls, that technologically limit redistribution of Marked Content to a geographic area surrounding the device, and those with affinity-based controls, which limit redistribution of Marked Content to devices associated with a particular person or small set of persons.¹ These controls may handle Marked Content in ways that will not necessarily be compatible. In determining any final set of criteria for authorized digital output protection technologies and recording methods, the Commission should ensure that where content is allowed to flow from technologies with

¹ There may also be technologies that employ both proximity- and affinity-based controls; and there may be technologies that employ identity-based controls, which are like affinity-based controls but limit redistribution to a particular person. For example, an identity-based protection system may require personal information such as name, address, credit card number to register devices to a single individual or household as opposed to an affinity-based protection system that only uses an anonymous, cryptographic process for associating devices to a single viewing group.

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proximity-based controls to technologies with affinity-based controls, or vice versa, that the limits envisioned by each are respected.

If not managed properly, the mixture of the two types of controls may be used to subvert both proximity-based controls and affinity-based controls. By alternating the use of the two types of controls, restrictions on redistribution can be evaded and a “daisy chain” of redistribution created, first by using an affinity-based network to subvert proximity controls and transmit content to a new location, then by using a proximity-based technology to subvert affinity controls and connect to a device that is a part of another affinity group associated with another person, then using an affinity-based network again. For example, in the interim certification proceedings, the Commission has approved some technologies, such as DTCP, WMDRM, and Helix that rely on proximity-based controls, and others such as TiVoGuard² and SmartRight³ that rely on affinity-based controls. Suppose someone uses the SmartRight technology (as approved by the Commission, but not as currently implemented by SmartRight) to send content to their vacation home, to a device within the sending device’s “Personal Private Network” (“PPN”). If the vacation-home SmartRight device has a DTCP output, that output could be used to send content to another SmartRight device in the vacation home belonging to a different PPN. The content could then be sent across the country again using SmartRight, then across another DTCP output to a third PPN, and so on, ad infinitum, evading both DTCP’s and SmartRight’s implemented controls. Of course, the example of SmartRight is simply illustrative, drawing on one technology the Commission is familiar with, but other examples will undoubtedly arise.

The Commission should therefore not approve such mixed uses of affinity-based and proximity-based controls unless the technology proponent has specified how it intends to maintain the relevant limits when content is transferred between the different approved technologies. If proponents of one type of output protection technology request certification that includes the possibility of outputs of the other type downstream, the technology proponent should be required to specify how it proposes to ensure the persistence of the relevant content controls, so that those controls are not evaded.

² The MPAA and its member companies have petitioned for reconsideration of the Commission’s approval of TiVoGuard.

³ SmartRight has been approved for use with broadcast content without proximity controls, although Thomson has stated on behalf of its SmartRight partners that SmartRight will voluntarily include proximity controls until remote access criteria are developed. The following hypothetical assumes SmartRight operating, as approved, without proximity controls, and is offered solely to illustrate the dangers of mixing the two types of controls. The MPAA and its member companies have petitioned for reconsideration and clarification of the Commission’s approval of SmartRight without proximity controls.

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In accordance with Section 1.1206 of the Federal Communications Commission rules, one copy of this notice is being filed electronically.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce E. Boyden". The signature is fluid and cursive, with the first name "Bruce" and last name "Boyden" clearly distinguishable.

Bruce E. Boyden

cc: W. Kenneth Ferree
William Johnson
Rick C. Chesson
Steven Broeckaert
Alison Greenwald
Michael Lance
Susan Mort
Mary Beth Murphy
Amy Nathan